

REMARKS

This is responsive to an Office Action mailed on February 26, 2007. The Office Action rejected claims 1, 2, 8, 9, 15, 16, 19, 21, 22 and 27-30. The Office Action objected to claims 3-7, 10-14, 17, 18, 20, 23-25 and 31. Applicants have amended claims 1, 15 and 21 and cancelled claim 8. The application currently includes 1-7, 9-25 and 27-31.

The Office Action rejected claims 1 and 9 provisionally on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1 and 9 of co-pending application no. 10/732,491. Upon receiving notification that all the claims of the present application and co-pending application no. 10/732,491 are in allowable form besides the ground of non-statutory obviousness-type double patenting, Applicant will provide a Terminal Disclaimer to overcome the rejection.

The Office Action rejected independent claim 1 under 35 U.S.C. §102(b) as being anticipated by the LeVahn et al., U.S. Patent No. 4,949,707. The Office Action alleges that the LeVahn patent discloses a surgical joint including a first clamping member, a second clamping member, a shaft 156 positioned within the attachment end of the first clamping member and in communication with the second clamping member and a spring or "force providing mechanism" 170 disposed about the shaft wherein a handle is attached to the force providing mechanism. The Office Action references FIG. 5, col. 6, lines 48-68 and col. 7, lines 1-19 and references marked up FIG. 5 in the Office Action.

Applicant respectfully disagrees that independent claim 1 is anticipated by the LeVahn patent. Claim 1 defines a force providing mechanism being disposed between the first and second clamping members. There is no disclosure in the LeVahn patent of the force providing member being disposed between the first and second clamping members.

What the LeVahn patent discloses is a spring member positioned between the upper and lower jaws of the second clamping member which biases the upper and lower jaws apart. The spring, being positioned between the upper and lower jaws of the same clamping member, is not

disposed between the first clamping member and the second clamping member as claimed. Therefore, the LeVahn patent does not disclose the structure defined in independent claim 1.

Additionally, the invention in independent claim 1 further defines the surgical joint as having a handle attached to the force providing mechanism where the outer surface of the handle contacts the force providing mechanism where the force providing mechanism and shaft are movable with respect to each other by gripping and applying manual force to the handle. There is no disclosure in the LeVahn patent of a surgical joint having a handle attached to the force providing mechanism where the handle is gripped and manual force is applied to the handle to move the force providing mechanism with respect to the shaft as claimed.

What the Office Action alleges to be a handle namely element 152 is not a handle. The Office Action alleges that the element 152 is capable of being held by the hand, at least during assembly of the LeVahn et al. device.

Applicant submits that the element 152 is not a handle as claimed because the element 152 cannot be gripped and have manual force when applied to the handle to move the force providing mechanism when positioned within the device. Also, the element 152 does not move with respect to any element of the disclosed clamp of the LeVahn patent.

In contrast to the allegations in the Office Action, the LeVahn patent discloses a handle at 146 which is at an end of the shaft opposite the element 152. The handle 146 is pivotally attached to a knot which is threadably attached to the shaft or bolt. One skilled in the art would not consider the non-moving element 152 to be a handle, especially when a handle is disclosed as being pivotally attached at the opposite end of the shaft.

For the foregoing reasons, independent claim 1 is believed to be in allowable form. Reconsideration and allowance of independent claim 1 are respectfully requested.

The Office Action also rejected dependent claims 2 and 8 as being anticipated by the LeVahn patent for the reasons stated with respect to independent claim 1. While Applicant does not acquiesce to the rejections of dependent claims 2 and 8, Applicant submits that the rejection is moot in light of the fact that independent claim 1 is in allowable form. Reconsideration and allowance of claims 2-8 are respectfully requested.

The Office Action also rejected independent claim 15 as being anticipated under 35 U.S.C. §102(b) by Farley, U.S. Patent No. 6,033,363. The Office Action alleges that the Farley patent discloses a surgical clamp including a clamping portion 56, a first leg 54, a second leg 64 and a wedge 66 disposed between the first and second legs where the wedge is moved to force the legs in opposite directions and references FIG. 3 and col. 3, lines 29-40. The Office Action further provided a marked up FIG. 3 from the Farley patent to illustrate the interpretation of the Farley patent.

Applicant respectfully disagrees that independent claim 15 is anticipated by the Farley patent. An element of independent claim 15 requires that the surgical clamp comprise a clamping portion, a first leg extending from one side of the clamping portion and a second leg extending from another side of the clamping portion where the first and second legs are spaced apart by the clamping portion and where the first leg and the second leg are of a unitary construction.

There is no disclosure in the Farley patent of a surgical clamp having a clamping portion that spaces the first and second legs apart from each other where the clamping portion, the first leg and the second leg are of unitary construction. Rather, the Office Action is alleging that the bottom leg of the upper clamp and the top leg of the bottom clamp, portions of two separate clamping members are to be considered a single clamp of the unitary construction. Two separate portions are not of a unitary construction.

Further, Applicant has defined claim 15 as having a clamping portion retaining the first and second legs spaced apart from each other. There is no disclosure in the Farley patent of this structure. The Office Action alleges that the shaft 56 is a clamping portion. However, the shaft 56 does not retain the first and second legs apart from each other. Rather, referring to Figure 4 on page 4 of the Office Action what is retaining the first and second legs apart from each other is the wedge. The wedge cannot be both the clamping portion and also the wedge as alleged.

For the foregoing reasons, Applicant submits that the Farley patent does not disclose each and every element of independent claim 15. Reconsideration and allowance of claim 15 is respectfully requested.

The Office Action also rejected claims 16 and 19 for the reasons stated with respect to

independent claim 15 and objected to claims 17 and 18. While Applicant does not acquiesce to the rejection of claims 16 and 19, the rejection is moot in light of the fact that independent claim 15 is in allowable form. Reconsideration and allowance of claims 16-19 are respectfully requested.

The Office Action rejected independent claim 21 as being anticipated under 35 U.S.C. §102(b) by the Mata et al. patent, U.S. Patent No. 5,752,954. The Office Action alleges that the Mata et al. patent discloses a surgical clamp for clamping to elongated members 80, 90, a mechanism 53 that constricts the opening of the clamping cavity of both members generally simultaneously and a handle fixedly attached to the mechanism and references FIG. 1, col. 2, line 57-col. 4, line 34.

Applicant respectfully disagrees that the Mata patent anticipates independent claim 21. An element of independent claim 21 includes a handle fixedly attached to the mechanism where an outer surface of the handle engages a mechanism where the handle is gripped and manual force is applied to the handle to move the mechanism to constrict the opening of the clamping cavity of the two members generally simultaneously.

The Office Action is alleging that the component having reference character 60 is a handle. However, there is no disclosure in the Mata patent of the element having reference numeral character 60 as being a handle. Rather, what the Mata patent discloses is that the reference character 60 is a stop piece. The stop piece is used for holding the stack of jaws around the clamping shaft in order to prevent the latter from detaching from the lower jaw. See col. 4, lines 17-19. The stop piece cannot be gripped to apply manual force to the stop piece to move the mechanism to constrict the opening of the clamping cavity of the two members generally simultaneously as claimed.

For the foregoing reasons, claim 21 is in allowable form. Reconsideration and allowance of claim 21 is respectfully requested.

The Office Action also rejected claims 22 and 27 for the reasons stated with respect to independent claim 21 and objected to claims 23-25. While Applicant does not acquiesce to the rejection of claims 22 and 27, Applicant submits that the rejection is moot in light of the fact that independent claim 21 is in allowable form. Because independent claim 21 is in allowable form, it

follows that dependent claims 22-25 and 27 are also in allowable form. Reconsideration and allowance of claims 22-25 and 27 are respectfully requested.

The Office Action rejected independent claim 28 under 35 USC §102(e) as being anticipated by Phillips U.S. Patent Application Publication No. 2003/0191370. The Office Action alleges that the Phillips application discloses a clamp having a pin 20 extending through a clamping member into a clamping cavity, a pin activating mechanism or wedge 44 that moves the pin into the clamping cavity pushing the clamping member in the clamping position and a spring 28 that biases the pin into the clamping cavity. The Office Action references Figure 2 and paragraph 17-20 of the application.

Applicant respectfully disagrees that the Phillips application anticipates independent claim 28. An element of independent claim 28 includes a pin activating mechanism positioned around a perimeter of a pin that moves the pin within the cavity placing the clamping member in a clamping position. There is no disclosure in the Phillips application of a pin activating mechanism positioned around the perimeter of the pin. Rather, referring to Figure 2 of the Phillips application, a spring 28 is positioned within a cavity 26 that engages a back end of a slide 20. A spring engaging a back end of a pin is not positioned around the perimeter of the pin as claimed. Therefore, Applicant respectfully submits that the Phillips application does not anticipate independent claim 28. Reconsideration and allowance of claim 28 are respectfully requested.

The Office Action also rejected dependent claims 29 and 30. While Applicants do not acquiesce to the rejections of claims 29 and 30, Applicant submits that the rejection is moot in light of the fact that independent claim 28 is in allowable form. The Office Action also objected dependent claim 31. Reconsideration and allowance of claims 29-31 are respectfully requested.

For the foregoing reasons, Applicant respectfully submits that the application is in allowable form. Reconsideration and allowance of the application is respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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